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COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUC000003

**Ex Parte, In re: Investigation of the
appropriate level of intrastate access
service prices**

HEARING EXAMINER'S RULING

August 10, 2000

On July 14, 2000, AT&T Communications of Virginia, Inc. ("AT&T") filed a Motion to Compel Bell Atlantic-Virginia, Inc.¹ ("Verizon Virginia") to Respond to Interrogatories and Requests for Production of Documents. AT&T seeks the average annual revenue per minute realized by Verizon Virginia for its intraLATA toll services and its switched access services for each year or part thereof for 1995 through the present. Verizon Virginia objected to providing the information because it is "confidential, competitively sensitive, and not relevant to this proceeding."

AT&T argues that Verizon Virginia's objection is untimely, and therefore it has waived its right to object. The Commission order instituting this proceeding provides that "objections to discovery requests shall be made within seven (7) calendar days of their service upon counsel."² AT&T asserts that it served the interrogatories on June 8, 2000, so objections were due June 15, 2000. The objections were submitted eight days later, on June 23, 2000. AT&T also asserts that it signed copies of the Agreement to Adhere to the Protective Ruling entered in this case, and any confidential or competitively sensitive information should not be withheld, but rather, produced in conformance with that agreement. Finally, AT&T asserts that the information sought is relevant to the level of access rates and Verizon Virginia's claim that it requires revenue neutral offsets to any access rate reductions ordered by the Commission in this case. AT&T argues that information about revenues for interrelated services will help the Commission decide to what extent, if any, the Company needs contributions from access rates.

Verizon Virginia answered the Motion to Compel on July 21, 2000. It urges the Commission to deny the Motion to Compel because the requested information is not relevant to this case and is not reasonably calculated to lead to the discovery of admissible evidence. Verizon Virginia admitted that it did not raise its objections until it answered the other questions in the same set of interrogatories. Counsel apologized for overlooking the shortened time for raising objections provided in the Order establishing this case. He observed that the practice has been to raise objections with the answers as prescribed in Rule 6:4 of the Commission's Rules of Practice and Procedure. He asks that Verizon

¹On August 1, 2000, Bell Atlantic- Virginia, Inc. changed its name to Verizon Virginia Inc.

²Order Establishing Investigation at 8 (February 2, 2000).

Virginia not be penalized for failing to raise the objections before the answers. Verizon Virginia also recognized that AT&T has signed a proprietary agreement in this case, and accordingly, stated that it would not withhold the requested information because of its proprietary nature. Verizon Virginia, however, continues to assert that the requested information is not relevant. It asserts that its past toll prices or revenues are not at issue in this case. Verizon Virginia, however, asserts that if its prices for access are reduced it is entitled, as a matter of law under the terms of its regulatory plan, to offset any revenue reduction with increases in prices for other services.

AT&T responded again arguing that Verizon Virginia has no need for any contribution above cost from access services because earnings over all services will be ample even after the access reductions proposed by AT&T.

On August 8, 2000, Staff of the State Corporation Commission ("Staff") and Verizon Virginia filed a Motion to Approve Settlement of Case in this proceeding. Therein they advised that they have reached agreement on issues in this case that involve Verizon Virginia. They seek review of a settlement attached to the motion in an expeditious fashion so that switched access rate decreases and other changes set forth in the agreement, if approved, can be implemented beginning January 1, 2001. Although it joins Staff in recommending the Commission adopt substantial reductions in that motion, Verizon Virginia recites therein that it maintains its legal position that any order requiring a reduction in revenues from access services should also allow it to raise the prices for other services to offset the lost revenue. Further, if the proposed reductions are not accepted, the need for offsets may well be addressed. The information sought is relevant to AT&T's argument that the access rates of Verizon Virginia can, and should, be lowered without any increase to the rates of other services. Accordingly,

I find that Verizon Virginia should, and hereby is **COMPELLED** to produce the Answers to Questions 5 and 6 of AT&T's Third Set of Interrogatories and Requests for Production of Documents as soon as possible but no later than August 17, 2000.

On July 24, 2000, GTE South Incorporated³ ("Verizon South") filed a Request for Leave to File Late Objection to Interrogatories served on it by AT&T. I find AT&T should have an opportunity to comment and, if appropriate, file a motion to compel the production of the requested information.

Accordingly, **IT IS DIRECTED** that AT&T should offer comment, if any, on or before August 17, 2000.

Deborah V. Ellenberg
Chief Hearing Examiner

³On August 1, 2000, GTE South Incorporated changed its name to Verizon South.